

**HAWAII SMALL BUSINESS
REGULATORY REVIEW
BOARD**

REPORT

**Findings and Recommendations
to the Hawaii State Legislature
in Accordance with Act 168,
SLH 1998, codified as Chapter 201M**

Business Support Division

**Department of Business, Economic Development
& Tourism - State of Hawaii**

1998 through 2002

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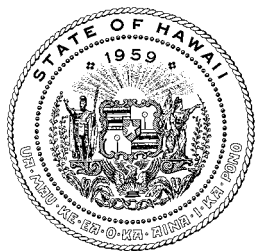
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MESSAGE FROM THE DIRECTOR

The Department of Business, Economic Development, and Tourism is pleased to have a close working relationship with the Small Business Regulatory Review Board. I commend the members of the Board for their past efforts and dedication to improving relationships with Hawaii's State and County departments and to fostering a positive business environment based on respect and a regard for mutual needs. These business representatives have given freely of their time and energies in the spirit of cooperation and true Aloha. From its conception, the purpose of this Board was to find the proper balance between free market efficiencies and regulatory responsibility. They have made an aggressive beginning toward that goal. Their efforts will contribute to the revitalization of Hawaii's economy and a better, stronger business community. I extend my personal Mahalo for their hard work.

Theodore E. Liu

Director



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586 2596
Fax 808 587 3833

Benjamin J. Cayetano
Governor

Seiji F. Naya
Director, DBEDT

MESSAGE FROM THE CHAIR

Denise Walker

Members

Denise Walker
Hawaii
Chairperson

Al M. Inoue
Hawaii

Dennis Okihara
Kauai

Nolan S. B. Ahn
Kauai

Carolann G. Guy
Maui

Warren Orikasa
Maui

Katsumi Tanaka
Oahu

Phyllis N. T. Shea
Oahu

Sidney A. Quintal
Oahu

Robert Speers, Ph. D.
Oahu



2001-2002

The Small Business Regulatory Review Board members are encouraged by the passage of HB 2449, HD1, that changes the June 30, 2002 sunset for the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Review Board and makes it permanent. Sacrificing the small business defender requirement from our founding legislation can be likened to an unfortunate war casualty in our struggle not to lose the entire battle. The Board remains committed to revisiting the creation of a legal support mechanism to redress the well-demonstrated business tendency to simply pay onerous government imposed fines rather than challenge them.

Hawaii's Small Business Regulatory Flexibility Act has been touted nationally and enjoys the approval of many local businesses and trade organizations. Nonetheless, a few state departments continue to behave as if they wanted to see this Board vanish, but to every extent possible we will labor to work collaboratively to ensure the fair and equal treatment of small business in the State of Hawaii. On balance, the Small Business Regulatory Review Board has encouraged open government and size-neutral policy making.

On behalf of our members and staff, we would like to express our gratitude to those legislators, agencies and businesses that participated in the making of good policy.

Denise Walker
Chair
September 2002

SMALL BUSINESS REGULATORY REVIEW BOARD

OVERVIEW

Members of the Small Business Regulatory Review Board are pleased to provide a summary of activities of the Board's pilot program that was created on July 1, 1998, pursuant to Act 168, SLH 1998 (Appendix 1). Act 168, also called the Regulatory Flexibility Act (RFA), went into effect July 14, 1998. In July 1999, the initial Review Board members were nominated by the Small Business Task Force created by Act 168 and given interim appointments by Governor Cayetano. Prior to its sun-setting on June 30, 2002, the Review Board received permanent status when Governor Cayetano signed HB 2449, HD1, SD2, which became Act 202, SLH 2002 (Appendix 2). The law has been codified as Chapter 201M, Hawaii Revised Statutes (Appendix 3). In addition to eliminating the sunset date, the law changes the original legislation in significant ways. Due to the lack of funding, the new version eliminates a provision for small businesses to have a "small business defender" in the legislative branch to represent them at administrative hearings on fines and penalties held by State regulatory agencies. The law also provides that current members of the Review Board nominate new appointees to the Board. In addition, the law changes the definition of "small business" - from firms with 200 employees to those with 100 employees.

The Review Board is comprised of eleven owners or officers of businesses from across the State who volunteer their time to review rules and regulations, attend state agency meetings, and comment on proposed legislation affecting small business. The Review Board usually meets monthly in Honolulu. It is administratively attached to the Department of Business, Economic Development & Tourism (DBEDT), and is provided administrative assistance by the Business Support Division and the Business Advocate. Throughout its first four years, the Review Board has had several new members and re-appointees whose terms

have expired. Since December 2002, the Review Board has been operating at full capacity. (Board Member Listing - Appendix 4.)

All new Board members are requested to attend a new board member orientation presented by the Office of the Attorney General. The orientation provides an overview of the Uniform Information Practices Act, State of Hawaii administrative procedures, a presentation on ethics for board members, and the procedures for conducting State board and commission meetings.

The Review Board is Hawaii small businesses' first line of defense against State rules and regulations that could cause burdensome compliance. The Review Board is charged with providing recommendations to State agencies on proposed new and amended administrative rules that directly impact small business. The Review Board also reviews existing rules at the request of a small business or at the Review Board's initiative.

Under Section 201M-2, HRS, State agencies that want to adopt new or modified administrative rules they determine "affect small business" first must submit to the Review Board a small business impact statement showing the economic impact that those changes would have on small businesses. Impact statements are required for proposed new and amended rules by the RFA and by Administrative Directive 99-02 (AD 99-02) (Appendix 5). On August 2, 1999, Governor Cayetano issued AD 99-02 to update the policy and procedure by which State departments and agencies request the Governor's approval for a public hearing for any proposed adoption, amendment or repeal of administrative rules developed under Chapter 91, HRS.

The Review Board reviews the impact statements outlining the new and proposed changes, while working with the agencies on behalf of the small business community. For requests regarding County ordinances, the Review Board has the authority to make

recommendations to the County Council or the Mayor for appropriate action. (Review Process for Existing Rules, Appendix 6.)

Workshops were initially held for State agencies on preparation of meaningful impact statements and to emphasize that, pursuant to AD 99-02, the Review Board should be involved during the drafting stage of administrative rules. Subsequently, research was performed that produced a summary of economic impact analysis procedures regarding legislation and regulations of 11 states. Research findings encompassed information that included descriptions of the governmental entity responsible for economic impact analysis, authorization, collection and assessment process of laws and regulations, potential burdens of measuring regulatory impact, an assessment of the impact of the legislation and/or regulatory process, assessment of market limitations, an analysis of how impact assessment is authorized, and samples of impact assessment forms.

As an effective and efficient means of review, each Review Board member is assigned to one or more State agencies as a “discussion leader,” and is responsible for the initial review of the administrative rules of that agency, prior to consideration by the full Review Board.

Under Section 201M-7, HRS, the Review Board must provide each agency with a list of any administrative rules adopted by the agency that have generated complaints or concerns. This includes any rules that may duplicate, overlap or conflict with other rules, or exceed the agency’s statutory authority. Within forty-five days after receiving notice of the list from the Review Board, the agency must submit a written report to the Review Board responding to the complaints or concerns. The agency must also disclose whether it has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

The Review Board also may solicit testimony from the public regarding any report submitted by the agency under Section 201M-7. Upon consideration of agency reports and public testimony, the Review Board may submit an evaluation report to the legislature in even numbered years, with proposals to eliminate or reduce the effect of rules and laws on small business. The legislature may then take such action in response to the report as it finds appropriate.

Now that the Review Board is a permanent agency, members have concluded that it is essential to re-establish what the Board stands for with clearly defined goals. With the assistance of trained facilitators, the Review Board established an internal board structure to determine its mission and vision. This will ultimately allow the Review Board the opportunity to become a significant, powerful advocate for Hawaii small business. By focusing on the following recommendations offered by Review Board members to achieve these goals at its August 2002 planning meeting, the Review Board will clearly understand its role and responsibilities:

1. Establish effective communication with government officials, understand the functions of the various governmental agencies and departments, and the internal workings of government. Meet with, collaborate with, and invite government agency representatives to attend monthly board meetings so that members may learn more about government procedures and processes, and to address specific issues.
2. Educate governmental agencies as to the Review Board's role in the regulatory review process.
3. Inform the small business community of the Review Board's functions and how the Board can assist them. Distribute brochures and letters to business organizations; invite those

organizations to attend scheduled board meetings to hear their concerns with regards to current laws and regulatory policies.

4. Propagate the existence and purpose of the Review Board through publicity in local newspapers and business magazines.
5. Adopt procedures for the handling of inquiries from small business, and determine what is within the Review Board's scope in accepting requests for regulatory review.

ADMINISTRATIVE RULES REVIEW

From July 1, 1999 through December 31, 2002, the Review Board reviewed a total of 111 sets of proposed new and amended administrative rules, as follows. The results are categorized in Appendix 7.

<u>Dates</u>	<u>Number of Rules</u>
7/99 – 6/00	42
7/00 – 6/01	41
7/01 – 6/02	17
7/02 – 12/02	<u>11</u>
Total	111

BOARD LEGISLATIVE ACTIVITY

Since its inception, the Review Board has supported legislation by submitting testimony on a number of bills of interest to small business, specifically those relating to the recreation industry and state contracting procedures. Most notably and of utmost concern was HB 2449, HD1, SD2, "Relating to Small Business," which the Review Board fully supported, and provided for the permanent establishment of the Regulatory Flexibility Act, and the Small Business Regulatory Review Board.

The Review Board will continue to monitor legislation with both positive and negative impacts on small business. Currently, two bills have been drafted for consideration in the 2003 legislative session. They relate to Workers' Compensation insurance for owners of limited liability companies and to the Small Business Regulatory Flexibility Act. The Workers' Compensation bill will provide equity for principal business owners so that they may elect to obtain worker's compensation regardless of the form of business structure chosen. The Small Business Regulatory Flexibility Act bill will clarify the procedures for rule-drafting agencies sending the Small Business Impact Statement to the Review Board.

PROJECTS AND ACTIVITIES

Since its inception, the Review Board has conducted ongoing projects and activities.

Projects and Activities:

- Formed a policy subcommittee to further define the meaning of “affects small business” as it is used in the RFA.
- Communicates directly with the Governor regarding specific small business issues.
- Attempted to develop, along with DBEDT staff, an alternative dispute resolution (ADR) project as a means of resolving issues between certain department and small businesses.
- Collaborated closely with the Slice Waste and Tape (SWAT) team, which focused on the clarification and administration of existing rules and regulations.
- Divided themselves into “committees” and “subcommittees” that focused on the regulations of each State agency. The committees and subcommittees will establish outreach programs to the business community, will recruit volunteers, and review proposed rules that relate to specific agencies.
- Makes presentations to small business organizations regarding the Review Board's role and responsibilities. These organizations include Kahului Kawanis, Wailuku Rotary,

Lahaina Sunrise Rotary, Kauai Small Business Advisory Committee, The Chamber of Commerce of Hawaii Small Business Council, Coalition of Care Home Administrators, etc.

The Board's plan of action is to continue to contact various small business groups such as industry associations, The Chamber of Commerce of Hawaii, Small Business Hawaii, the Coalition of Care Home Administrators, and many others.

DISCUSSION LEADER REPORTS

The following comments by Board discussion leaders pertain to their view of the major State agencies since the Review Board's inception. Because some government agencies generated little or no regulatory activity that affected small business during this time period, this report does not include comments for every department or board and commission.

Department of Accounting & General Services (DAGS)

The Review Board has reviewed proposed rules and has had small business inquiries relating to State and County procurement processes. It will continue to submit input to facilitate more small business participation in government contracting.

Department of Agriculture/Board of Agriculture (DOA)

The Board's discussion leader works very closely with all those associated in the agricultural industry to insure that emerging rules and regulations will not adversely impact those struggling to earn a living in agriculture. Several key issues have been reviewed and recommendations by the industry affected have been lively and productive.

Department of Budget & Finance (B&F)/Public Utilities Commission (PUC)

B&F: No key matters of small business impact have been noted to date.

PUC: In the next session, the Review Board envisions better contact with the PUC and will seek input from both the agency and those industries it regulates.

Department of Business, Economic Development & Tourism (DBEDT)

DBEDT will develop new and innovative programs to foster direct assistance to small businesses statewide.

Department of Commerce & Consumer Affairs (DCCA)

The subcommittee requested and received information concerning the number of professional and vocational licenses as well as the frequency of renewal, as the Board was concerned that many of the licenses may not need annual renewal, but could be renewed every five years. The Board was also concerned that licenses remain valid and be automatically renewed if the licensee is in good standing.

Department of Defense (DOD)

No key matters of small business impact have been noted to date.

Department of Education (DOE)

The Review Board is concerned that DOE educate our children in a manner that would provide us with a competent and skilled workforce. No key matters of small business impact have been noted to date.

Department of Hawaiian Home Lands and the Office of Hawaiian Affairs

No key matters of small business impact have been noted to date.

Department of Health (DOH)

The Board's subcommittee reviewed DOH's submittal for the Clean Water Act update, and has recommended that DOH adopt the federal requirement as required, but not to exceed federally mandated requirements.

The subcommittee agreed to receive a petition for rule review from a Honolulu dentist, as provided by the RFA, regarding the DOH procedure to certify dental x-ray machines, in comparison to the standards for hospital x-ray machines.

The Review Board has extensively reviewed the draft administrative rules for Chapter 11-100.1 “Adult Residential Care Homes.” The Board discussion leader had numerous meetings with representatives from the Adult Residential Care Home small business associations, as well as several communications to the Chief of The Office of Health Care Assurance regarding documents outlining dialogue and commentary with affected care homes. A compromise resolution of the major regulation issues, agreed to by all parties involved is being developed prior to submission of the rules to public hearing.

Department of Human Resources Development (DHRD)

No key matters of small business impact have been noted to date.

Department of Human Services (DHS)

The Review Board has reviewed many submittals by DHS and continues to work closely with them. No key matters of small business impact have been noted to date.

Department of Labor & Industrial Relations (DLIR)

Many concerns continue to filter into the Review Board regarding Occupational Safety and Health enforcement procedures. The Board continues to monitor the progress of DLIR’s commitment to the review process.

Department of Land & Natural Resources (DLNR)

Many issues have been presented that are under DLNR’s purview. The Review Board has been monitoring several key land and boating issues and continues to make recommendations to the Division of Boating and Ocean Recreation. Close monitoring of DLNR’s commitment to the review process will continue.

Department of Public Safety (DPS)

No key matters of small business impact have been noted to date.

Department of Taxation (DoTax)

Subcommittee members and DoTax personnel have discussed and addressed several issues and tax related proposals.

The Board Discussion Leader met with DoTax income tax specialists regarding Chapters 18-247 “Conveyance Tax,” Chapter 18-243 “Fuel Tax” and Chapter 18-237D “Transient Accommodations Tax.” Several changes to the Conveyance Tax administrative rule recommendations from the Review Board were incorporated into the final draft rules in several instances. Regarding the Transient Accommodations Tax, the Review Board proposed that DoTax include an exemption for all Hawaii residents regarding natural disasters. If pursued, this proposal will require a statutory change.

Department of Transportation (DOT)

Subcommittee board members met with DOT administrative personnel concerning matters such as the transportation and licensing of hazardous waste carriers, licensing and permitting of small aircraft at State operated airports, licensing of “off-airport” rental vehicles and licensing of baggage deliveries. There were also discussions covering the possibility of returning management and operation of the State small boat harbors back to the DOT/Harbors Division from the Department of Land and Natural Resources.

There has been ongoing dialogue between the Board and DOT regarding Chapter 19-21 “Ground Transportation at Public Airports.” The Board opposed DOT’s proposal to increase fees to off-airport rent-a-car services at public airports based on a percentage of gross receipts. Alternatively, the Board recommended that any increase in fees to off-airport rent-a-car services

should be based upon an increase to the existing fee of no more than 25% to 50%. As a result, DOT is in the process of modifying the fee increase proposal.

Office of the Attorney General and Ethics Commission

No key matters of small business impact have been noted to date.

Supreme Court – The Judiciary

The Board discussed issues and concepts with the Center for Alternative Dispute Resolution to determine how best to resolve conflicts between small businesses and government regulatory agencies.

University of Hawaii

No key matters of small business impact have been noted to date.

Others

A Board discussion leader sits on the Kauai Department of Water Small Business Advisory Committee where discussions regarding the proposed amendment of rules and relating to the adoption of water system standards have been ongoing. The Kauai Department of Water has presented the Review Board with these standards after they had incorporated recommendations from the Advisory Committee with regard to small business impacts.

Maui Liquor Commission

The Review Board reviewed the Commission rules and made several recommendations, which were incorporated into the final rules.

Appendix 1

ACT 168**A Bill for an Act Relating to Hawaii Small Business Regulatory Flexibility Act.**

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that small business is the backbone of our State's economy. The legislature further finds that administrative rules adopted by state agencies can have an unduly burdensome impact on the growth and vitality of small business. The legislature therefore, declares that it is the policy of this State to address the disproportionate impact administrative rules may have on small business by requiring agencies to consult with the small business community affected to better assess the impacts and consider alternatives for easing those impacts when drafting rules.

The legislature further finds that an agency's interpretation or application of its rules may also have a disproportionately burdensome impact on a small business especially when the small business lacks the resources to contest an agency's interpretation or application of a rule imposing a fine, citation, or penalty. This has contributed to a general feeling of mistrust of, and frustration with, these regulating agencies. Improving the public's perception of government, particularly with regard to its regulatory and rulemaking functions, is inherent to improving the State's business climate. Despite the oftentimes burdensome regulatory requirements on businesses by government, regulations are also necessary for businesses to operate.

This Act provides for a petition process to an agency for regulatory review, periodic administrative review of rules with small business impacts, and an independent regulatory review board to consider concerns of small businesses and make recommendations to adopt, amend, or repeal rules. This Act also requires agencies to provide an opportunity for compliance to rules and regulations affecting small business without the assessment of monetary fines.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER HAWAII SMALL BUSINESS REGULATORY FLEXIBILITY ACT

§ -1 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section -4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

"Small business" means a for-profit enterprise consisting of fewer than two hundred full-time or part-time employees.

§ -2 **Determination of small business impact; small business impact statement.** (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the small business regulatory review board prior to providing notice for a public hearing. The statement shall provide a reasonable determination of the following:

1. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
2. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;

3. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
4. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
5. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
6. How the agency involved small business in the development of the proposed rules; and
7. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.
8. This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations which affords the agency no discretion to consider less restrictive alternatives.

§ -3 Small business statement after public hearing. For any proposed rules that affect small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

1. A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
2. The number of persons who:
 - A. Attended the public hearing;
 - B. Testified at the hearing; and
 - C. Submitted written comments; and
3. If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change.

§ -4 Advisory committee on small business; consultation process for proposed rules. (a) There may be established within and administratively

attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business.

§ -5 Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the

governor pursuant to section 26-34. Selection for the initial board shall come from a list of nominees submitted by the small business task force on regulatory relief. Thereafter, the nominations shall be made from names submitted by any and all of the departmental advisory committees on small business. The appointments shall reflect representation of a variety of small businesses in the State; provided that no more than two members shall be representatives from the same type of small business, and that there shall be at least two small business representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a small business and shall not be an officer or employee of the federal, state, or county government. The governor shall appoint the initial chairperson of the board, and a majority of the board shall elect subsequent chairpersons. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

1. Adopt any rules necessary to implement this chapter;
2. Organize and hold conferences on problems affecting small business; and
3. Do any and all things necessary to effectuate the purposes of this chapter.

§ -6 Petition for regulatory review. (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

1. The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
2. The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business; or
3. These impacts were not previously considered at the public hearing on the rules.

(b) For rules adopted prior to the effective date of this chapter, an affected small business may file a written petition with the agency that adopted the rules objecting to all or part of any rules affecting small business on any of the following grounds:

1. The rules created an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
2. The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
3. The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(c) Upon submission of the petition, the agency shall forward a copy of the petition to the board as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(d) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the small business regulatory review board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. For rules adopted after the effective date of this chapter, the board may base its recommendation on any of the following reasons:

1. The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
2. The impact statement did not consider new or significant economic information that reveals an undue impact on small business; or
3. These impacts were not previously considered at the public hearing on the rules.

(e) For rules adopted prior to the effective date of this chapter, the regulatory review board may base its recommendation to the agency on any of the following reasons:

1. The rules created an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
2. The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
3. The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(f) If the small business regulatory review board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (d) or (e), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (c). The legislature may subsequently take such action in response to the evaluation report and the agency's response as it finds appropriate.

(g) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91.

§ -7 **Periodic review; evaluation report.** (a) Each agency having rules that affect small business in effect on the effective date of this chapter shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

(b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the small business regulatory review board shall submit an evaluation report to each regular session of the legislature in even-numbered years. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take such action in response to the report as it finds appropriate.

§ -8 **Waiver or reduction of penalties.** (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

1. The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and

2. The violation was unintentional or the result of excusable neglect; or
 3. The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.
- (b) Subsection (a) shall not apply when:
1. A small business fails to exercise good faith in complying with the statute or rules;
 2. A violation involves willful or criminal conduct; and
 3. A violation results in serious health, safety, or environmental impact.

(c) An agency may adopt rules to implement the requirements of this section.

§ -9 **Executive order.** The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter."

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to title 3 to be appropriately designated and to read as follows:

"CHAPTER SMALL BUSINESS DEFENDER

§ -1 **Small business defender.** (a) There is established within the legislature a small business defender. The small business defender shall be appointed by the senate president and speaker of the House of Representatives. The senate president and speaker of the House of Representatives shall determine the salary of the small business defender. The senate president and speaker of the House of Representatives may also appoint administrative support personnel who shall assist and support the small business defender.

(b) Unless otherwise specifically provided by law, and upon written request by a small business, the small business defender may represent, defend, and provide legal representation to any small business, during any adjudicatory or contested proceeding involving any civil citation issued by a state or county agency in which the small business is a party; provided that the small business shall seek its own legal representation whenever the potential remedies against the small business may include fines or penalties that exceed \$25,000 or may result in the suspension or revocation of a license. The small business defender shall have the discretion to accept or refuse any case for good

cause. The small business defender may also engage in the following activities:

1. Advocate and negotiate, upon consultation with the small business regulatory review board, with federal, state, and county agencies and officials on any matter relating to and promoting the interests of small business;
2. Conduct investigations to secure information useful in the lawful administration of any provision in this chapter;
3. Refer any appropriate matter to the auditor or ombudsman for examination or investigation; and
4. Do any and all things necessary to effectuate the purposes of this chapter.

(c) Each small business shall waive and release any and all claims, damages, causes of action, and any request for relief made against the small business defender or staff, the State or counties, their officers, employees, or agents, and arising from the legal representation of the small business by the small business defender provided under this section.

§ -2 Annual report. The small business defender shall submit an annual report to the legislature detailing its activities and expenditures no later than twenty days prior to convening of the regular session."

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. This Act shall take effect on July 1, 1998, and shall be repealed as of June 30, 2002.

(Approved July 14, 1998.)

Appendix 2

Report Title:

Small Business

Description:

Amends the definition of "small business" in the Hawaii Small Business Regulatory Flexibility Act to mean an enterprise with fewer than 100 employees; allows the small business regulatory review board to nominate replacement board members; allows the review board to elect the chairperson of the board; deletes provisions for a small business defender. (SD2)

HOUSE OF REPRESENTATIVES

TWENTY-FIRST LEGISLATURE,
2002

STATE OF HAWAII

H.B. NO. 2449
H.D. 1

S.D. 2

A BILL FOR AN ACT

RELATING TO SMALL BUSINESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds a need to continue to provide relief from unduly burdensome rules for small businesses by amending the Small Business Regulatory Flexibility Act. The specific changes include:

(1) Amending the definition of "small business" to focus regulatory relief efforts on those businesses too small to have the resources to respond to broad-based regulations;

(2) Allowing the small business regulatory review board to make nominations to fill board vacancies;

- (3) Allowing the majority of the board to elect the chairperson;
- (4) Requiring the board to submit an annual report to the legislature;
- (5) Deleting the provision for a small business defender; and
- (6) Making the Small Business Regulatory Flexibility Act and the small business regulatory review board permanent through removal of the sunset date.

SECTION 2. Act 168, Session Laws of Hawaii 1998, is amended by amending the definition of "small business" in section -1 of the chapter established in section 2 of that Act to read as follows:

"Small business" means a for-profit enterprise consisting of fewer than ~~[two]~~ one hundred full-time or part-time employees."

SECTION 3. Act 168, Session Laws of Hawaii 1998, is amended by amending section -5 of the chapter established in section 2 of that Act to read as follows:

"§ -5 Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34. ~~[Selection for the initial board shall come from a list of nominees submitted by the small business task force on regulatory relief. Thereafter, the nominations]~~ Nominations to fill vacancies shall be made from names submitted by [any and all of the departmental advisory committees on small business.] the review board. The appointments shall reflect representation of a variety of ~~[small]~~ businesses in the State; provided that no more than two members shall be representatives from the same type of ~~[small]~~ business, and that there shall be at least two ~~[small business]~~ representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a ~~[small]~~ business and shall not be an officer or employee of the federal, state, or county government. ~~[The governor]~~

~~shall appoint the initial chairperson of the board, and a~~ A majority of the board shall elect ~~[subsequent chairpersons]~~ the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

(1) Adopt any rules necessary to implement this chapter;

(2) Organize and hold conferences on problems affecting small business; and

(3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation."

SECTION 4. Section 3, Act 168, Session Laws of Hawaii 1998, is repealed.

~~"[SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to title 3 to be appropriately designated and to read as follows:~~

~~"CHAPTER~~

~~SMALL BUSINESS DEFENDER~~

~~§ 1 Small business defender. (a) There is established within the legislature a small business defender. The small business defender shall be appointed by the senate president and speaker of the house of representatives. The senate president and speaker of the house of representatives shall determine the salary of the small business defender. The senate president and speaker of the house of representatives may also appoint administrative support personnel who shall assist and support the small business defender.~~

~~(b) Unless otherwise specifically provided by law, and upon written request by a small business, the small business defender may represent, defend, and provide legal representation to any small business, during any adjudicatory or contested proceeding involving any civil citation issued by a state or county agency in which the small business is a party; provided that the small business shall seek its own legal representation whenever the potential remedies against the small business may include fines or penalties that exceed \$25,000 or may result in the suspension or revocation of a license. The small business defender shall have the discretion to accept or refuse any case for good cause. The small business defender may also engage in the following activities:~~

~~(1) Advocate and negotiate, upon consultation with the small business regulatory review board, with federal, state, and county agencies and officials on any matter relating to and promoting the interests of small business;~~

~~(2) Conduct investigations to secure information useful in the lawful administration of any provision in this chapter;~~

~~(3) Refer any appropriate matter to the auditor or ombudsman for examination or investigation; and~~

~~(4) Do any and all things necessary to effectuate the purposes of this chapter.~~

~~(c) Each small business shall waive and release any and all claims, damages, causes of action, and any request for relief made against the small business defender or staff, the State or counties, their officers, employees, or agents, and arising from the legal representation of the small business by the small business defender provided under this section.~~

~~§ 2 Annual report. The small business defender shall submit an annual report to the legislature detailing its activities and expenditures no later than twenty days prior to convening of the regular session."]"~~

SECTION 5. Act 168, Session Laws of Hawaii 1998, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect on July 1, 1998[, and shall be repealed as of June 30, 2002]."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on June 29, 2002.

Appendix 3

[CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT]

Section

201M-1 Definitions

201M-2 Determination of small business impact; small
business impact statement

201M-3 Small business statement after public hearing

201M-4 Advisory committee on small business; consultation
process for proposed rules

201M-5 Small business regulatory review board; powers

201M-6 Petition for regulatory review

201M-7 Periodic review; evaluation report

201M-8 Waiver or reduction of penalties

201M-9 Executive order

[§201M-1] **Definitions.** As used in this chapter, unless the context
clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as
established in section 201M-4.

"Affected small businesses" or "affects small business" means any
potential or actual requirement imposed upon a small business through
an agency's proposed or adopted rule that will cause a direct and
significant economic burden upon a small business, or is directly
related to the formation, operation, or expansion of a small
business.

"Agency" means each state or county board, commission, department, or
officer authorized by law to make rules, except those in the
legislative or judicial branches.

"Board" means the small business regulatory review board.

"Small business" means a for-profit enterprise consisting of fewer
than one hundred full-time or part-time employees. [L 1998, c 168, pt
of §2, §5; am L 2002, c 202, §5]

[\$201M-2] Determination of small business impact; small business impact statement. (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the small business regulatory review board prior to providing notice for a public hearing. The statement shall provide a reasonable determination of the following:

(1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;

(2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;

(3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;

(4) The probable monetary cost and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;

(5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;

(6) How the agency involved small business in the development of the proposed rules; and

(7) Whether the proposed rules include provisions

that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations which afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

[\$201M-3] Small business statement after public hearing. For any proposed rules that affect small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

(1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;

(2) The number of persons who:

(A) Attended the public hearing;

(B) Testified at the hearing; and

(C) Submitted written comments; and

(3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

[§201M-4] Advisory committee on small business; consultation process for proposed rules. (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

[§201M-5] Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34. Nominations to fill vacancies shall be made from names submitted by the review board. The appointments shall reflect representation of a variety of businesses in the State; provided that no more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5]

[§201M-6] Petition for regulatory review. (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business; or
- (3) These impacts were not previously considered at the public hearing on the rules.

(b) For rules adopted prior to July 1, 1998, an affected small business may file a written petition with the agency that adopted the rules objecting to all or part of any rules affecting small business on any of the following grounds:

(1) The rules created an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;

(2) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted: or

(3) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(c) Upon submission of the petition, the agency shall forward a copy of the petition to the board as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(d) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the small business regulatory review board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. For rules adopted after July 1, 1998, the board may base its recommendation on any of the following reasons:

(1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;

(2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business; or

(3) These impacts were not previously considered at the public hearing on the rules.

(e) For rules adopted prior to July 1, 1998, the regulatory review board may base its recommendation to the agency on any of the following reasons:

(1) The rules created an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;

(2) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or

(3) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(f) If the small business regulatory review board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (d) or (e), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (c). The legislature may subsequently take such action in response to the evaluation report and the agency's response as it finds appropriate.

(g) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

Revision Note

"July 1, 1998" substituted for "the effective date of this chapter".

[§201M-7] Periodic review; evaluation report. (a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

(b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the small business regulatory review board shall submit an evaluation report to each regular session of the legislature in even-numbered years. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take such action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

[§201M-8] Waiver or reduction of penalties. (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
- (2) The violation was unintentional or the result of excusable neglect; or
- (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.

(b) Subsection (a) shall not apply when:

(1) A small business fails to exercise good faith in complying with the statute or rules;

(2) A violation involves wilful or criminal conduct; and

(3) A violation results in serious health, safety, or environmental impact.

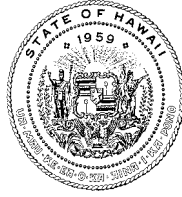
(c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

[§201M-9] Executive order. The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

Appendix 4

Members	Contact Information		Responsibilities
Denise Walker (Big Island)	Walker Consultants P.O. Box 4998, Hilo, HI 96720 dwalker@aloha.net	Phone: (808) 966-6514 Fax: (808) 966-6509	Dept. of Health, Environmental Division; Dept. of Land & Natural Resources, Div. of Boating & Ocean Recreation; Dept. of Accounting & General Services; Dept. of Defense; Dept. of Public Safety
Al M. Inoue (Big Island)	Pacific Area Consultants Corp. 101 Aupuni St., #1001, Hilo, HI 96720 pacc@gte.net	Phone: (808) 935-5741 Fax: (808) 935-8269	Dept. of Land & Natural Resources, Land Division, Land Leases & Board of Land & Natural Resources, Burial Council, Planning, etc.
Dennis Okihara (Kauai)	Haupu Growers P.O. Box 1004, Waimea, HI 96796 oki@hawaiian.net	Phone: (808) 337-9044 Fax: (808) 742-8973	Dept. of Agriculture, Board of Agriculture
Nolan S. B. Ahn (Kauai)	Anuenue Associates, Financial Planners 4139-B Hardy St., Lihue, HI 96766 anuenue@hawaiian.net	Phone: (808) 245-6741 Fax: (808) 245-7915	Dept. of Education, Board of Education; Dept. of Commerce & Consumer Affairs; Office of the Governor
Carolann Guy (Maui)	Four Star Mortgage 101 Kaahumanu Ave., Kahului, HI 96732 cguy@mauigateway.com	Phone: (808) 877-4000 Fax: (808) 877-4448	Dept. of Budget & Finance; Public Utility Commission; Office of the Lieutenant Governor; Dept. of the Attorney General
Warren Orikasa (Maui)	Maui Carpet & Drapery dba Abbey Carpet of Maui 150 Hana Hwy. #1B, Kahului, HI 96732 wori@gte.net	Phone: (808) 871-5825 Fax: (808) 871-7451	Dept. of Commerce & Consumer Affairs Dept. of Business, Economic Development & Tourism
Katsumi Tanaka Chairperson (Oahu)	E Noa Tours 1141 Waimanu St. #105, Honolulu, HI 96814 ktakenami@waikikitrolley.com & ktanaka@waikikitrolley.com	Phone: 524-0832 Fax: 591-9065	Dept. of Transportation; Dept. of Business, Economic Development & Tourism; University of Hawaii; Office of the Governor
Phyllis N. T. Shea (Oahu)	Shea & Co., CPA's, Inc. 1585 Kapiolani Blvd. Suite 1240 Honolulu, HI 96814 pshea@gte.net	Phone: 949-4209 Fax: 942-9576	Dept. of Taxation Dept. of Human Resources Development Dept. of Labor & Industrial Relations
Robert Speers, Ph.D. (Oahu)	Rainbow Rehabilitation Association 1441 Kapiolani Blvd., Suite 807 Honolulu, HI 96814 perch@panworld.net	Phone: 955-7244 Kahula: 239-2399 Fax: 955-7249 Kahula: 239-2397	Dept. of Health Dept. of Human Resources Development Dept. of Education Dept. of Commerce & Consumer Affairs
Sidney Quintal (Oahu)	Sun Industries Inc. 660 Mapunapuna St., Honolulu, HI 93819 squintal@hawaiisafety.com	Phone: 833-2502 Fax: 834-5630	Dept. of Land & Natural Resources, Div. of Boating & Ocean Recreation
Maile Romanowski (Oahu) resigned as of 06/30/2002	Jas W. Glover Ltd. P.O. Box 579, Honolulu, HI 96809 mailer@gloverltd.com	Phone: 591-8977 Fax: 591-0309	Dept. of Labor & Industrial Relations, Hawaii Occupational Safety & Health Div., Wage and Labor; Dept. of Transportation; Dept. of the Attorney General; Hawaiian Home Lands

Appendix 5



EXECUTIVE CHAMBERS
HONOLULU

August 2, 1999

BENJAMIN J. CAYETANO
GOVERNOR

ADMINISTRATIVE DIRECTIVE NO. 99-02

To: All Department Heads

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It rescinds Administrative Directive No. 94-04, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated July 28, 1994.

Legal Reference:

section 91-3(c), Hawaii Revised Statutes, provides that, "the adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor."

Section 2 of Act 168, Session Laws of Hawaii 1998, enacted the "Hawaii Small Business Regulatory Flexibility Act," which requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board and to any departmental advisory committee on small business; unless the proposed rule is being promulgated on an emergency basis or in accordance with a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute, such as a federally-mandated regulation which affords the department or agency no discretion to consider less restrictive alternatives.

Policy:

Whenever any department or agency requests executive approval for the proposed adoption, amendment, or repeal of a rule, the director of the department or agency shall ensure that the proposed changes conform with existing legal provisions, especially those provisions of Chapter 91, Hawaii Revised Statutes, and current administrative rules. In requesting the adoption, amendment, or repeal of any rule, the director shall fully explain or submit the following:

1. Exact changes to be made and the reasons for the changes, including a justification for the proposed adoption, amendment, or repeal of any rule. If applicable, the present rule shall be cited and the proposed rule shall be quoted in full without paraphrasing.
2. Manner in which the proposed adoption, amendment, or repeal of the rules would affect the operations or programs of the department or agency in terms of responsibilities, functions, activities, and inter-relationships, both internal and external.
3. Final result (e.g. a program improvement/clarification of statute) to be expected by instituting the proposed adoption? amendment, or repeal of a rule.
4. Program and financial impact on the State upon the adoption, amendment, or repeal of the rules. This should include the:
 - a. Long- and short-range program impact, and
 - b. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates of anticipated savings or funding shortfalls projected over the subsequent four-year planning period.
5. Long- and short-term impacts on the public, on economic growth and the economy of the State.
6. Other alternatives explored in attempting to resolve the problem or situation at hand other than that of adopting, amending, or repealing the rules in question.
7. A determination as to whether the proposed rule will affect small business. For purposes of this Directive, a proposed rule will affect small business if the proposed rule will be applied to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees, and will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

If a proposed rule affects small business, the department or agency shall discuss:

- a. Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposed rule;
- b. Whether it has considered creative, innovative, or flexible methods of compliance for

small business in lieu of adopting the proposed rule;

- c. Whether it has prepared a Small Business Impact Statement” that has been submitted to the Small Business Regulatory Review Board and to any departmental advisory committee on small business for its respective consideration and recommendation, in the manner described in § -2 of Section 2, Act 168, SLH 1998; and
- d. Whether any recommendation was made by the Small Business Regulatory Review Board and the departmental advisory committee on small business regarding the proposed rule; and, if the recommendation was not adopted, an explanation for not adopting the recommendation.

Procedure:

Prior Approval for Public Hearing.

Prior to formal publication of notice of public hearing on the proposed adoption, amendment, or repeal of any rule, departments and agencies shall:

- a. Obtain the Attorney General’s approval as to form prior to submitting the rule to me for approval for public hearing;
- b. Provide me with a copy of the proposed rule, including the information requested in Items 1 through 7 above. A copy of the requested information and a copy of the proposed rule shall be concurrently provided to the Director of Budget and Finance and to the Director of Business, Economic Development, and Tourism;
- c. Prepare and submit a Small Business Impact Statement” as required by Item 7 of the previous section; and
- d. Obtain my approval for public hearing on any rule to be adopted, amended, or repealed.

2. Notice of Public Hearings.

If any proposed rule affects small business, the notice of public hearing shall summarize any business impact described in the Small Business Impact Statement,” and shall state any new fee or compliance burdens that will affect small business.

3. Final Approval of Proposed Rule After Public Hearing.

Departments and agencies shall obtain my final approval for the adoption, amendment, or repeal of any rule after the required public hearing has been held. In requesting final approval, the director of the department or agency concerned shall:

- a. Indicate whether the facts and circumstances regarding the proposed adoption, amendment, or repeal of any rule has changed, compared to that information that was sent to me before the public hearing;
- b. Provide a copy of the proposed rule to the Attorney General for approval as to form prior to submitting the rule to my office for final approval;
- c. Describe any changes that have been made to the proposed rule following public hearing, by explaining these changes and providing me with any updates of information requested in Items 1 through 7 of the above-stated Policy section. A copy of this information shall be concurrently sent to the Director of Budget and Finance, the Director of Business, Economic Development, and Tourism, and the Attorney General;

If the changes are determined to be substantial or material by the Attorney General, an additional public hearing shall be held. In these situations, the previous procedures related to my prior approval to proceed to public hearing shall be followed;

- d. Indicate whether the proposed rule affects small business; and, if so, whether a “Small Business Statement,” which provides the information described in § -3 of Section 2, Act 168, SLH 1998, has been submitted to the Small Business Regulatory Review Board and the departmental advisory committee on small business; and
- e. Submit three copies of the proposed adoption, amendment, or repeal of the rule in standard format and in accordance with Chapter 91, HRS, for my final approval. The original and a copy of the rules adopted by the

department or agency shall be signed by the director of the department; or by the chairperson of a board or commission when the rule has been adopted by a board or commission which is assigned to a department for administrative purposes; or by the chairperson of the board or commission of a principal department; and by the Attorney General or the duly appointed Deputy Attorney General. The third copy may have a facsimile of the required signatures.

4 Distribution of Approved Adopted Rules.

- a. A complete set of three copies approved by me shall be filed at the Office of the Lieutenant Governor.
- b. The Office of the Lieutenant Governor shall provide one copy to the agency adopting, amending, or repealing the rule.
- c. Each department or agency adopting, amending, or repealing the rule shall submit one file-stamped and certified copy of the rule in the Ramseyer and standard formats to the Legislative Reference Bureau.

Your full and prompt cooperation in complying with provisions of this administrative directive is essential.


NJAMIN J. CAYETANO

RULE-MAKING CHECKLIST
FOR
"SMALL BUSINESS IMPACT STATEMENT"
(§ -2, Section 2, Act 168, Session Laws of Hawaii 1998)

DEPARTMENT OR AGENCY:

Chapter and Title:

Name and Phone Number of Contact Person:

A. Description:

☐ New rule(s) ☐ Repeal of Rule ☐ Amendment to rule(s)

B. Provide the following information described in Items 1-7 of the Policy Section in the Governor's Administrative Directive No. _____:

1. Exact Changes and Reasons for Changes.

2. Nature of Proposed Changes.

a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?

☐ Yes ☐ No

b. Is the proposed rule an emergency regulation?

☐ Yes ☐ No

c. Will the proposed rule affect small business because it:

1) will apply to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees?

☐ Yes ☐ No

2) will cause a direct and significant economic burden upon a small business?

☐ Yes ☐ No

3) is directly related to the formation, operation, or expansion of a small business?

☐ Yes ☐ No

Provide the information requested in only Items 3-7 (Skip Items 8-11):

- If you answered YES to either Item 2. a. or Item 2. b.: or
- If you answered NO to Item 2. c. 1); or
- If you answered YES to Item 2. c. 1), and NO to both Item 2. c. 2) and Item 2. c. 3).

Provide the information requested in Items 3-11:

- If you answered YES to Item 2. c. 1), and YES to either Item 2. c. 2) or 2. c. 3).

3. Departmental Impact (i.e. fiscal, personnel, program)?
___ Yes ___ No (If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.)
4. Impact on General Public (i.e. individuals, consumers, and businesses)?
___ Yes ___ No (If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.)
5. Impact on state economy?
___ Yes ___ No (If yes, describe long and short-range impacts.)
6. Final result anticipated from the proposed rule change.
7. Other alternatives explored to carry out the statutory purpose other than rulemaking.

Small Business Impact Statement:

8. Is there a new or increased fee or fine?
___ Yes ___ No If yes, provide the following information:
 - a. Amount of the current fee or fine and last time it was increased.
 - b. Amount of the proposed fee or fine and percentage increase.

- c. Reason for new or increased fee or fine.
- d. Administrative cost to implement or enforce the proposed rule.
- e. Amount agency expects to collect annually from change in fee or fine.
- f. Will fee revert to general fund? If not, specify where and how monies will be allocated.
- g. Criteria used to determine amount of fee or fine. (Example: cost of specific service, general overhead or overall program cost, or no relationship to cost).

9. Will the proposed rule affect small business?

☐ Yes ☐ No If yes, provide the following information:

- a. Describe the type(s) of small business that will be directly or adversely affected by, bear the costs of, or directly benefit from the proposed rule.
- b. Description of any increase in direct costs, in estimated dollar amounts, to small business, such as fees or fines, or other direct costs associated with compliance.
- c. Description of any increase in indirect costs, in estimated dollar amounts, to small business, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss or other costs associated with compliance.
- d. Description of how small business was involved in the development of the proposed rules.
- e. Methods considered or used to reduce the impact on small business such as:
 - Simplification,
 - Consolidation,
 - Varying schedule for fees or fines,
 - Modified compliance or reporting requirements, or
 - Other alternative or less stringent measures proposed by affected businesses and, if proposed, why those proposals were not adopted.
- f. If the proposed rule is more stringent than those mandated by governing federal or state law or statute, explain how and why the proposed rule is more stringent.

10. Was the departmental advisory committee on small business or other small businesses or organizations consulted during the drafting of the proposed rule, and were the committee's recommendations, if any, incorporated into the proposed rule?
11. Did the Small Business Regulatory Review Board or a small business make any recommendation to the department or agency regarding the need for any rule change that may be related to the proposed rule?

RULE-MAKING CHECKLIST
FOR
"SMALL BUSINESS STATEMENT" AFTER PUBLIC HEARING
(§ -3, Section 2, Act 168, Session Laws of Hawaii 1998)

DEPARTMENT OR AGENCY:

Chapter and Title:

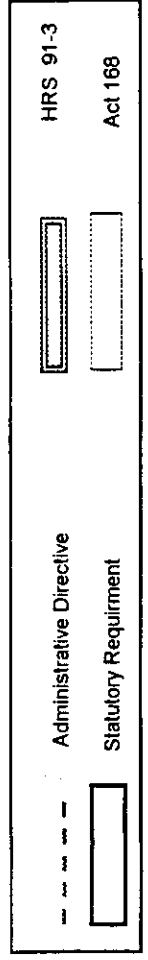
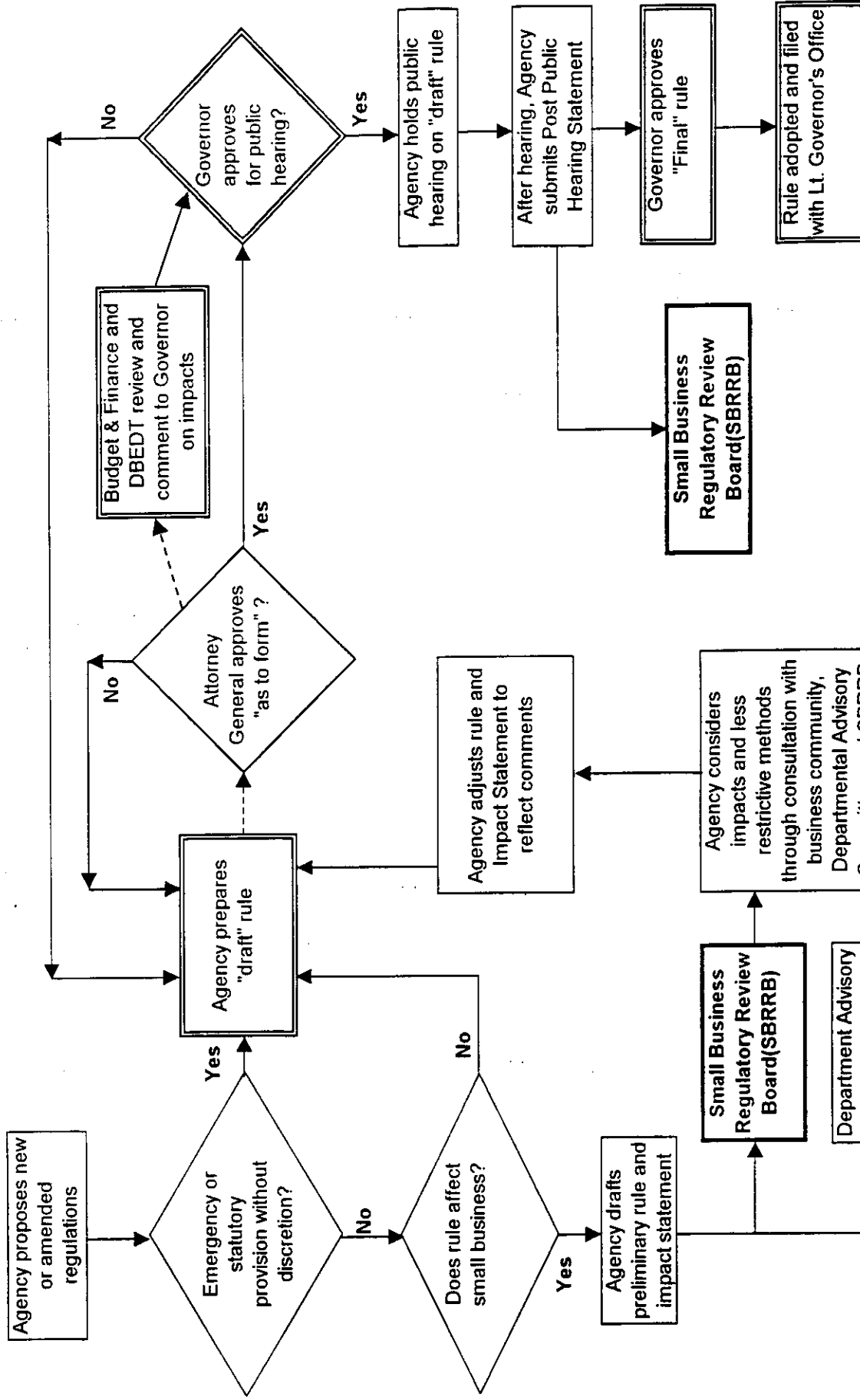
Name and Phone Number of Contact Person:

1. Summarize how the comments or testimonies from small business were solicited.
2. Summarize the written and oral comments or testimonies received from the public and small business regarding any proposed rule that affects small business.
3. Summarize the department's or agency's response to the comments or testimonies received in Item 2.
4. How many persons attended the public hearing? _____
5. How many persons orally testified at the public hearing? _____
6. How many persons submitted written comments or testimonies in response to the proposed rule? _____
7. If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.

(NOTE: This statement may be included in the memorandum to the Governor requesting approval of the final rule after public hearing.)

Appendix 6

HAWAII SMALL BUSINESS REGULATORY FLEXIBILITY ACT RULE-MAKING PROCESS



Appendix 7

Administrative Rules Reviewed

	Month/Year	Support	Oppose	No Comment	Support w/Rec.	Sup/Oppose	Pending
FY 2000	Jul-99						
	Aug-99						
	Sep-99						
	Oct-99						
	Nov-99						
	Dec-99						
	Jan-00						
	Feb-00	11	1				
	Mar-00	4					
	Apr-00	7			2		
	May-00	12			1		
	Jun-00	4					
FY 2001	Jul-00	2	1	1			
	Aug-00	2		4			
	Sep-00	3		4	1		
	Oct-00	7		1	1		
	Nov-00	2	1				
	Dec-00	2					
	Jan-01	2					
	Feb-01						
	Mar-01						
	Apr-01	3		1			
	May-01	2					
	Jun-01	1					
FY 2002	Jul-01	3					
	Aug-01	2					
	Sep-01						
	Oct-01						
	Nov-01	1					
	Dec-01			1			
	Jan-02	3	1	1			
	Feb-02	2				1	
	Mar-02			1			
	Apr-02						
	May-02	1					
	Jun-02						3
FY 2003	Jul-02	1					2
	Aug-02	1					2
	Sep-02	1					2
	Oct-02	1					2
	Nov-02	3					2
	Dec-02	4					0
		87	4	14	5	1	0

Total = 111

